

FILED

APR 12 2010


Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

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MARK A. GUSTAFSON,

CIV 09-4191

Petitioner,

MEMORANDUM OPINION
AND ORDER

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-vs-

*

UNITED STATES OF AMERICA,

*

Respondent.

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Petitioner, Mark A. Gustafson, paid his filing fee and filed a petition requesting relief under 28 U.S.C. § 2241. Since his petition lacked factual and procedural information relevant to the Court's disposition of this matter, the Court directed the Clerk to send Petitioner an Application Form for Habeas Corpus under 28 U.S.C. § 2241 for the Petitioner to complete and return to this Court. Petitioner has now completed the form and returned the same.

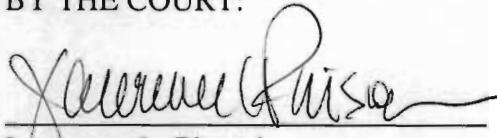
Gustafson's Petition discloses that he was convicted on March 27, 2007, of tax charges in federal district court in Nebraska and his appeal to the Eighth Circuit Court of Appeals was denied. Petitioner has also unsuccessfully filed a motion under 28 U.S.C. § 2255 in federal district court in Nebraska. Petitioner states that he was unaware that he was allowed to appeal the denial of his § 2255 motion.

A federal inmate generally must challenge his conviction or sentence through a § 2255 motion. *Abdullah v. Hedrick*, 392 F.3d 957, 959 (8th Cir.2004). The savings clause of § 2255, 28 U.S.C. § 2255(e), permits a petition under § 2241 if the § 2255 remedy is inadequate or ineffective to test the legality of a conviction or a sentence. The inmate bears the burden of showing that the remedy under § 2255 is inadequate or ineffective. Petitioner has not met that burden. Filing an action under 28 U.S.C. § 2241 is not a valid substitute for timely filing an appeal from a denial of a § 2255 motion. Accordingly,

IT IS ORDERED that the Petition for § 2241 relief is hereby denied.

Dated this 11th day of April, 2010.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: Summer Wahba
DEPUTY